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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JAN 26 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
IBASIS RETAIL, INC. D/B/A IBASIS, FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD LONG DISTANCE
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20618A-08-0469

DECISION NO. 71473

ORDER

Open Meeting
January 12 and 13, 2010
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 8, 2008, iBasis Retail, Inc., d/b/a iBasis ("iBasis" or "Company"), filed with the Commission an application for a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold long distance telecommunications services within a service area encompassing the entire State of Arizona ("Application").

2. On October 27, 2008, iBasis filed an Affidavit of Publication indicating that notice of the Application had been published on October 10, 2008, in *The Arizona Business Gazette*.

3. On October 31, 2008, the Commission's Utilities Division Staff ("Staff") issued its Letter of Insufficiency and First Set of Data Requests, and on December 5, 2008, iBasis filed its responses to those data requests.

4. On April 10, 2009, the Staff issued its Second Set of Data Requests, and on May 11, 2009, iBasis filed its responses to those data requests.

1 5. On June 23, 2009, Staff issued its Third Set of Data Requests, and on July 17, 2009,
2 iBasis filed its responses to those data requests.

3 6. On October 23, 2009, Staff filed its Staff Report recommending approval of iBasis'
4 Application subject to certain conditions.

5 **Fitness and Properness to Obtain a CC&N**

6 7. iBasis is a Delaware "C" corporation, granted authority on June 25, 2008, to do
7 business in Arizona as a foreign corporation.

8 8. iBasis is in good standing with the Commission's Corporations Division.

9 9. iBasis currently does not hold a CC&N to provide telecommunications services in
10 Arizona.

11 10. iBasis has indicated that neither iBasis nor any of its officers, directors, partners, or
12 managers have been or are currently involved in any civil or criminal investigations, have had
13 judgments entered in any civil or criminal matter or levied by any administrative or regulatory
14 agency, or have been convicted of any criminal acts within the past 10 years.

15 11. Staff noted in the Staff report that the Company's 10-Q provided in the financial
16 statements submitted with the Application, listed a number of investigations or proceedings involving
17 iBasis' parent company, iBasis, Inc. ("Parent Company").

18 12. One matter involves a class action complaint filed in 2001 in the United States District
19 Court for the Southern District of New York against the Parent Company and its investment banking
20 firms, regarding the Parent Company's 1999 initial public common stock offering and its 2000
21 secondary common stock offering. As a result of settlement negotiations, the District Court issued a
22 preliminary order regarding the specifics of a settlement. The matter is still ongoing and the Parent
23 Company expects that additional settlement negotiations will occur.

24 13. Staff states that the Parent Company also has a claim against it relating to the 2001
25 bankruptcy proceedings involving World Access, Inc., WorldxChange Communications, Inc., and
26 Facilicom International, LLC, together with other related debtors (collectively, the "Debtors"), who
27 filed for Chapter 11 relief in the Bankruptcy Court for the Northern District of Illinois. In 2003, the
28 Debtors asserted claims against the Parent Company because of alleged preferential transfers and

1 nonpayment of overdue amounts owed by the Parent Company to the Debtors for approximately \$2.1
2 million. According to Staff, the Parent Company asserted certain defenses to the claims and filed
3 proofs of claim for approximately \$500,000, to which the trustee for the Debtors has objected. The
4 Parent Company is engaging in mediation in an attempt to resolve the dispute. Staff notes that
5 neither iBasis nor its officers were named in the petitions.

6 14. Staff states that in 2006, two derivative actions relating to the Parent Company's stock
7 options were filed in the United States District Court of Massachusetts. Staff notes that on December
8 5, 2007, the District Court issued a formal order dismissing the entire action for lack of jurisdiction.
9 The plaintiffs in the matter appealed the dismissal to the First Circuit Court of Appeals and the appeal
10 is currently pending.

11 15. Staff also notes that, in 2006, the Securities and Exchange Commission ("SEC")
12 contacted the Parent Company in an informal inquiry, and later a formal inquiry, into the Parent
13 Company's grant of its stock options from 1999 through 2007. On November 24, 2008, the SEC
14 notified the Parent Company that it is considering recommending that the SEC bring a civil
15 injunction against the Parent Company and certain of its officers. iBasis states that the Parent
16 Company is cooperating fully with the SEC inquiry.

17 16. Finally, Staff notes that J & J Communications, Inc. ("J & J"), filed a suit against
18 Abdul Communications, Inc. ("Abdul"), and later joined the Parent Company and another defendant
19 to the complaint. The case involves a contract dispute between J & J and Abdul, and the calling cards
20 that Abdul purchased from the Parent Company. On June 2, 2008, the Court granted the Parent
21 Company's motion to dismiss three counts in J & J's complaint. None of the Parent Company's
22 officers are named in the suit and iBasis is not a party. The Company states that no civil judgments
23 have been rendered and that the Parent Company anticipates filing for summary judgment of all
24 claims against it.

25 17. According to iBasis, it currently has authority to provide resold interexchange service
26 in thirteen states. Staff contacted the state public utility commissions ("PUCs") in these thirteen
27 states to confirm iBasis' operating authority and to inquire as to consumer complaints. Staff found
28 that there have been no consumer complaints filed against iBasis.

1 18. Staff notes that a search of the Federal Communications Commission's website found
2 that there have been no complaints filed against iBasis.

3 19. Finally, Staff states that the Consumer Services Section of the Utilities Division
4 reported no complaints, inquiries, or opinions filed within Arizona against iBasis between January 1,
5 2005 and August 26, 2009.

6 **Technical Capabilities**

7 20. iBasis intends to offer resold long distance telecommunications services from Verizon,
8 Sprint, and Global Crossing to subscribers in Arizona.

9 21. iBasis is a wholly-owned subsidiary of the Parent Company.

10 22. iBasis' management team is comprised of four employees who have over 32 years
11 experience in the telecommunications industry.

12 23. iBasis has authority to provide, and/or is providing, resold long distance
13 telecommunications services similar to those it intends to offer in Arizona in thirteen states.

14 24. Based on the foregoing, Staff determined that iBasis has sufficient technical
15 capabilities to provide resold long distance telecommunications services in Arizona.

16 **Financial Resources**

17 25. iBasis provided the audited financial statements for its Parent Company for the
18 twelve-month periods ending December 31, 2006, and December 31, 2007. According to the Staff
19 Report, the Parent Company's 2007 financial statement lists assets of \$659,873,000, total equity of
20 \$334,490,000, and a net income of \$16,123,000. The 2006 financial statement lists assets of
21 \$233,269,000, total equity of \$23,978,000, and net income of \$42,490,000.

22 26. iBasis' Application indicated that it intends to rely on the financial resources of its
23 Parent Company.

24 27. iBasis projects total revenues generated by the provision of telecommunications
25 services to Arizona customers for the first 12 months of operations to be \$20,000, with no operating
26 expenses in Arizona during that period.

27 28. iBasis projects the net book value of all Arizona jurisdictional assets and the projected
28 value of all Arizona assets after the first 12 months of operations to be zero.

1 29. Staff stated that if iBasis experienced financial difficulty, it would have only a
2 minimal impact on its customers because many companies provide resold long distance
3 telecommunications services, and facilities-based providers are also available.

4 **Proposed Rates**

5 30. Staff indicates that the rates proposed by iBasis are for competitive services and that
6 rates for competitive telecommunications services are generally not established according to rate-of-
7 return regulation.

8 31. Staff has determined that iBasis' fair value rate base is zero. While Staff considered
9 the fair value rate base information submitted by the Company, Staff determined that the fair value
10 rate base information should not be given substantial weight in its analysis.

11 32. As a reseller of services purchased from other telecommunications companies, iBasis
12 will have no market power and will have to compete with other providers to obtain subscribers to its
13 services. In light of this competitive market, Staff believes that the Company's proposed tariffs will
14 be just and reasonable.

15 33. Staff reviewed iBasis' proposed rates and determined that they are just and reasonable.

16 34. iBasis' tariff indicates that it will not collect advance payments or deposits from its
17 resold long distance customers, however the Company will be offering prepaid calling cards. As
18 such, Staff recommends that iBasis be required to file a \$10,000 performance bond or irrevocable
19 sight draft letter of credit in order to protect Arizona customers.

20 **Regulatory Requirements**

21 35. Commission rules require iBasis to file a tariff for each competitive service that states
22 the maximum rate as well as the effective (actual) price that will be charged for the service. Under
23 Arizona Administrative Code ("A.A.C.") R14-2-1109(A), the minimum rate for a service must not be
24 below the total service long-run incremental cost of providing the service. Any change to iBasis'
25 effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum
26 rate for a service in the Company's tariff must comply with A.A.C. R14-2-1110.

27 36. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
28 interconnect to the public switched network to provide funding for the Arizona Universal Service

1 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
2 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.
3 R14-2-1204(B)(2).

4 37. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from
5 unauthorized carrier changes ("slamming") and apply to each public service corporation providing
6 telecommunications services within the State of Arizona and over which the Commission has
7 jurisdiction.

8 38. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from
9 unauthorized carrier charges ("cramming") and apply to each public service corporation providing
10 telecommunications services within the State of Arizona and over which the Commission has
11 jurisdiction.

12 39. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
13 an application for authorization with the Commission before it discontinues service; the rule also
14 establishes customer notice requirements and other requirements related to discontinuance of service.

15 **Staff's Recommendations**

16 40. Staff recommends approval of iBasis' Application and further recommends:

- 17 a. That iBasis be ordered to comply with all Commission rules, orders, and other
18 requirements relevant to the provision of intrastate telecommunications
service;
- 19 b. That iBasis be ordered to maintain its accounts and records as required by the
20 Commission;
- 21 c. That iBasis be ordered to file with the Commission all financial and other
22 reports that the Commission may require, in a form and at such times as the
Commission may designate;
- 23 d. That iBasis be ordered to maintain on file with the Commission all current
tariffs and rates and any service standards that the Commission may require;
- 24 e. That iBasis be ordered to comply with the Commission's rules and to modify
25 its tariffs to conform to those rules if it is determined that there is a conflict
between iBasis' tariffs and Commission rules;
- 26 f. That iBasis be ordered to cooperate with Commission investigations, including
27 but not limited to customer complaints;
- 28 g. That iBasis be ordered to participate in and contribute to the AUSF as required
by the Commission;

- 1 h. That iBasis be ordered to notify the Commission immediately upon changes to
2 its name, address, or telephone number;
- 3 i. That iBasis' intrastate interexchange service offerings be classified as
4 competitive pursuant to A.A.C. R14-2-1108;
- 5 j. That the maximum rates for iBasis' services be the maximum rates proposed
6 by iBasis in its proposed tariffs;
- 7 k. That the minimum rates for iBasis' services be the total service long-run
8 incremental costs of providing those services, as set forth in A.A.C. R14-2-
9 1109;
- 10 l. If iBasis states only one rate for a service in its proposed tariff, that the rate
11 stated be the effective (actual) price to be charged for the service as well as the
12 service's maximum rate;
- 13 m. That iBasis' fair value base rate is zero;
- 14 n. That should iBasis request to *discontinue and/or* abandon its service area,
15 iBasis must provide notice to both the Commission and its customers, in
16 accordance with A.A.C. R-14-2-1107; and
- 17 o. That iBasis be ordered to do the following and that its CC&N be rendered null
18 and void, after due process, if it fails to do the following:
- 19 i. iBasis shall docket conforming tariffs within 365 days from the date of
20 an Order in this matter or 30 days before providing service, whichever
21 comes first, and in accordance with this Decision.
- 22 ii. iBasis shall procure either a performance bond or an irrevocable sight
23 draft letter of credit equal to \$10,000.
- 24 iii. iBasis shall docket proof of the original performance bond or
25 irrevocable sight draft letter of credit with the Commission's Business
26 Office and copies of the performance bond or irrevocable sight draft
27 letter of credit with Docket Control, as a compliance item in this
28 docket, within 90 days of the effective date of a Decision in this matter
 or 10 days before the first customer is served, whichever comes earlier.
 iBasis shall notify the Commission when its first customer is served.
 The performance bond or irrevocable sight draft letter of credit must
 remain in effect until further order of the Commission. The
 Commission may draw on the performance bond or irrevocable sight
 draft letter of credit, on behalf of, and for the sole benefit of, the
 Company's customers, if the Commission finds, in its discretion, that
 the Company is in default of its obligations arising from its Certificate.
 The Commission may use the performance bond or irrevocable sight
 draft letter of credit funds, as appropriate, to protect the Company's
 customers and public interest and take any and all actions the
 Commission deems necessary, in its discretion, including, but not
 limited to, returning prepayments or deposits collected from the
 Company's customers.

41. Staff's recommendations are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Upon receiving a CC&N, iBasis will be a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over iBasis and the subject matter of the Application.

3. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

4. A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a hearing if the CC&N is for resold telecommunications services.

5. Notice of iBasis' Application was given in accordance with the law.

6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes, it is in the public interest for iBasis to provide the telecommunications services for which it has requested authorization in its Application.

7. iBasis is a fit and proper entity to receive a CC&N authorizing it to provide resold long distance telecommunications services in the State of Arizona.

8. The telecommunications services that iBasis desires to provide are competitive in Arizona.

9. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is just and reasonable and in the public interest for iBasis to establish rates and charges for competitive services that are not less than iBasis' total service long-run incremental costs of providing the competitive services approved herein.

10. Staff's recommendations, as set forth in Findings of Fact No. 40 are reasonable and should be adopted.

11. iBasis' fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide Arizona customers.

12. iBasis' rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

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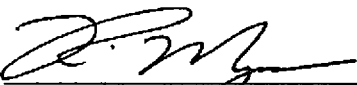
ORDER

IT IS THEREFORE ORDERED that the Application of iBasis Retail, Inc., d/b/a iBasis, for a Certificate of Convenience and Necessity to provide competitive resold long distance telecommunications services in Arizona is hereby granted conditioned upon compliance with the conditions and recommendations set forth in Findings of Fact No. 40

IT IS FURTHER ORDERED that if iBasis Retail, Inc., d/b/a iBasis, fails to meet the conditions outlined in Findings of Fact No. 40(o) within the stated timeframes, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

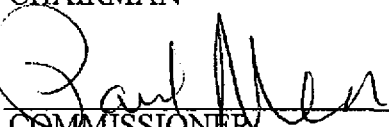
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



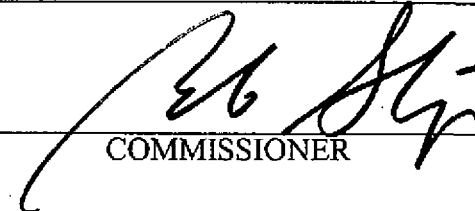
CHAIRMAN



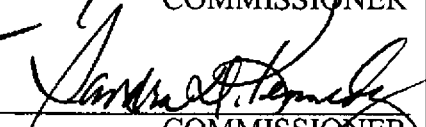
COMMISSIONER



COMMISSIONER

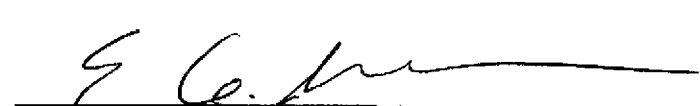


COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 26th day of JANUARY, 2010.



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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2 DOCKET NO.: T-20618A-08-0469

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